

REMARKS

Reconsideration of the application in view of the following remarks is respectfully requested. Claims 1-27, 30-31, 42-43, and 53-54 have been canceled. No claims have been amended. Claims 28-29, 32-41, 44-52 and 55-60 are currently pending in the application.

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

In the Office Action, the Examiner rejected claims 28-29, 32-41, 44-52, and 55-60 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 4, 11, and 14 of U.S. Patent No. 7,437,556. Although Applicants disagree with this rejection and believe that the rejected claims are patentably distinct over the claims of Patent 7,437,556, Applicants, in the interest of advancing prosecution, are filing herewith a Terminal Disclaimer. Applicants respectfully submit that this Terminal Disclaimer is sufficient to overcome the double patenting rejection. Accordingly, Applicants request that this rejection be withdrawn.

CLAIM REJECTION UNDER 35 U.S.C. §101

In the Office Action, the Examiner rejected claims 52 and 55-60 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Specifically, the Examiner contended that the "means for" elements of the apparatus claims can be interpreted to encompass software per se, and since software per se is non-statutory subject matter, the overall claims are non-statutory. This rejection is respectfully traversed.

Applicants respectfully submit that the Examiner's interpretation of the "means for" elements of the claims as encompassing software per se is untenable. Applicants note that

each of the "means for" elements of the apparatus claims is recited as a means for performing a certain function. Thus, an item can be reasonably interpreted to be such a means only if that item is capable of performing that function. Software per se does not satisfy this requirement. As is extremely well known in the computing arts, software per se (i.e. program code in and of itself) is incapable of performing any functions. By itself, software or program code does nothing. Functionality is realized only when the software is executed by one or more processors. Since software per se is incapable of performing any functions, and since the "means for" elements of the apparatus claims are recited as means for performing certain functions, it is absolutely clear that the "means for" elements of the apparatus claims cannot be reasonably interpreted to encompass software per se. For at least this reason, Applicants respectfully submit that the rejection of claims 52 and 55-60 under 35 U.S.C. §101 is improper, and request that this rejection be withdrawn.

ALLOWABLE SUBJECT MATTER

In the Office Action, the Examiner acknowledged that claims 28-29, 32-41, and 44-51 are allowable, and that claims 52 and 55-60 would be allowable if they could overcome the rejection under 35 U.S.C. §101. Applicants thank the Examiner for this acknowledgement.

CONCLUSION

For the foregoing reasons, Applicants submit that all of the pending claims are patentable over the art of record, including any art cited but not applied. Accordingly, allowance of all of the pending claims is hereby respectfully solicited.

The Examiner is invited to telephone the undersigned attorney to discuss any issues that may advance prosecution.

To the extent necessary to make this reply timely, Applicants petition for an extension of time under 37 C.F.R. §1.136.

If any applicable fee is missing or insufficient, throughout the pendency of this application, the Commissioner is hereby authorized to apply any applicable fees and to credit any overpayments to our Deposit Account No. 50-1302.

Respectfully submitted,

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